IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Review Application (MCC 14/2019)
With
Delay Condonation Application (CLMA 541/2019)
In
Writ Petition (MB) No. 1818/2001
(Old No. 29833/1998)

Surya Roshni Ltd ... Review-applicant

Versus

U.P. State Electricity Board & Others ... Respondents

Sri P.R. Mullick, Advocate, for the review-applicant/petitioner.
Sri Tapan Singh, Advocate, for the respondents.

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Narayan Singh Dhanik, J.

Ramesh Ranganathan, C.J. (Oral)

Application seeking condonation of delay of 4486 days is not opposed by Sri Tapan Singh, learned Counsel for the respondents, and the delay is, therefore, condoned. Delay condonation application stands disposed of.

2. This application is filed seeking review of the order passed by a Division of this Court in WPMS No. 1818 of 2001 dated 21.8.2006. The applicant herein had earlier invoked the jurisdiction of the Allahabad High Court by filing WPMB No. 29833 of 1998, questioning the order, passed by the Chairman, Uttar Pradesh State Electricity Board, dated 3.2.1998, setting aside the order, passed by the Empowered Committee dated 5.1.1998, declaring that there was no theft of electricity by the applicant; and the meter was

faulty. After the State of Uttarakhand was created on 09.11.2000, the Writ Petition was transferred from the Allahabad High Court to the Uttarakhand High Court, and was renumbered as WP (M/B) No. 1818 of 2001. The Division Bench, in its order in WP (M/B) No. 1818 of 2001 dated 21.8.2006, observed this was a case of assessment of electricity bill on account of either fault of the meter or on account of theft; the petitioner had a remedy before the Consumer Grievance Redressal Forum; the petitioner may approach the said forum; and the Redressal Forum shall examine and pass appropriate order on the grievance of the petitioner. The writ petition was, accordingly, dismissed.

3. The applicant herein did not subject the order of the Division Bench, in WP (M/B) No. 1818 of 2001 dated 21.8.2006, to challenge before the Supreme Court and, instead, approached the Consumer Grievance Redressal Forum. In its order dated 7.6.2008, the Redressal Forum opined that it was a case of faulty meter and the bill dated 1.3.2008, for Rs.1,35,08,706 for the period 24.8.1986 to 31.5.1987, raised by the third respondent herein against the petitioner, was time barred and illegal in nature. The said order was quashed by the Consumer Grievance Redressal Forum. Aggrieved thereby, the Executive Engineer invoked the writ jurisdiction of this Court by filing WP (M/S) No. 1592 of 2008. In his order dated 9.7.2014, in WP (M/S) No. 1592 of 2008, a learned Single Judge of this Court recorded the consent of the learned Counsel for the parties, that the Consumer Grievance Redressal Forum lacked jurisdiction to quash the order passed by the

Chairman of the Electricity Board dated 3.2.1998. While expressing his agreement, with the submission of learned Counsel for the parties that the Consumer Grievance Redressal Forum had absolutely no jurisdiction to examine the legality and correctness of the order dated 3.2.1998, issued by the Chairman of the Electricity Board, cancelling the order passed by the Chief Engineer dated 5.1.1988, the learned Single Judge set aside the order of the Consumer Grievance Redressal Forum on the ground that it was without jurisdiction. Thereafter, the learned Single Judge noted the submission of learned Counsel, for the review-applicant herein, that they would approach the Division Bench of this Court for review of the order dated 21.8.2006, requesting it to examine the legality and correctness of the order dated 3.2.1998, passed by the Chairman of the Electricity Board. While quashing the impugned order, the learned Single Judge gave liberty to the applicant to file review application in WP (M/B) No. 1818 of 2001, seeking review of the order dated 21.8.2006, with a further request to examine the legality and correctness of the order dated 3.2.1998, passed by the Chairman of the Electricity Board. Aggrieved thereby, the review-applicant herein carried the matter in appeal, before a Division Bench of this Court, in SPA No. 363 of 2014.

4. The Division Bench, in its order in SPA No. 363 of 2014 dated 27.9.2018, noted that the review applicant herein had agreed, before the learned Single Judge, to file a review petition against the order dated 21.8.2006 as well as the consequential orders; it was a consent order; ordinarily, appeals are not maintainable

against a consensual order; and primacy had to be attached to judicial orders. Holding that there was no merit in the Special Appeal, and while dismissing the said appeal, the Division Bench left it open to the appellant to file a review petition.

5. The present application is filed seeking review of the order passed in WP (M/B) No. 1818 of 2001 dated 21.8.2006. When we asked Sri P.R. Mullick, learned Counsel for the review-applicant, to show us how the order of the Division Bench, in WP (M/B) No. 1818 of 2001 dated 21.08.2006, suffered from an error apparent, justifying exercise of the review jurisdiction, learned Counsel would fairly state that the Consumer Grievance Redressal Forum had the jurisdiction to examine the matter under sub-clause (5) of Section 42 of the Electricity Act, 2003. He would, however, contend that the learned Single Judge had erroneously recorded the consent of the review-applicant in the order, in WP (M/S) No. 1592 of 2008 dated 9.7.2014, that the Consumer Grievance Redressal Forum lacked jurisdiction.

6. As it is contended before us, by the learned Counsel for the review-applicant, that the earlier order of the Division Bench in WP (M/B) No. 1818 of 2001 dated 21.8.2006, relegating the applicant to the remedy of approaching the Consumer Grievance Redressal Forum, did not suffer from any error apparent on the face of the record, there is no justification in seeking review of the said order.

7. Sri P.R. Mullick, learned Counsel for the review-applicant, would however contend that the

applicant is now left remediless, as the learned Single judge, in his order in WP (M/S) No. 1592 of 2008 dated 9.7.2014, had wrongly recorded the applicant's consent that the Consumer Grievance Redressal Forum lacked jurisdiction; and the applicant had, perforce, to file the present application seeking review of the order of the Division Bench in WPMB No. 1818 of 2001 dated 21.8.2006.

8. If, as is now contended before us, the applicant had not conceded before the learned Single Judge that the Consumer Grievance Redressal Forum lacked jurisdiction, they ought to have sought review of the order of the learned Single Judge, in WP (M/S) No. 1592 of 2008 dated 9.7.2014, soon after it was passed.

9. In **State of Maharashtra v. Ramdas Shrinivas Nayak & Another**, (1982) 2 SCC 463, the Supreme Court held thus:-

> ....."When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. **We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".** ***Per Lord Atkinson in Somasundaran Chetty v. Subramanian Chetty,*** **A.I.R 1926 P.C. 136:. We are bound**

to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. ***Per Lord Buckmaster in Madhusudan Chowdhri v. Chanderwati Chawdhrain,*** **A.I.R. 1917 P.C. 30**

That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

In *R v. Mellor*, (1858) 7 Cox CC 454 Martin B. was reported to have said:

"we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

In *King-Emperor v. Barendra Kumar Ghose,* 28 Cal WN 170 Page, J. said:

> **"... these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive: it is not to be criticised or circumvented; much less is it to be exposed to animadversion".**
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> **In *Sarat Chandra Maiti v. Bibhabati Debi,* 34 Cal LJ 302 Sir Asutosh Mookerjee explained what had to be done:**
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> **"...It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment...."**
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> **So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else....."**
>
> (emphasis supplied)

10. The events, as recorded in the order of a Court, cannot be questioned before another Court, and the only remedy available to a party, which is of the view that the order wrongly records their consent, is to seek review of the said order, soon after the order was passed, informing the learned Judge that he had erroneously recorded their consent in the order passed by him. Instead of doing so, the applicant herein chose to prefer SPA No. 363 of 2014 against the order passed by the learned Single Judge in WP (M/S) No. 1592 of 2008 dated 9.7.2014 which was also dismissed by order dated 27.9.2018. The applicant, having chosen not to prefer an appeal thereagainst before the

Supreme Court, has permitted the said order of the Division Bench to attain finality.

11. As Sri P.R. Mullick, learned Counsel for the applicant, does not even contend before us that the order, review of which is sought, suffers from an error apparent on the face of the record and, on the other hand, contends that the Division Bench had by its order in WP (M/B) No. 1818 of 2001 dated 21.08.2006, rightly relegated the applicant to the remedy of approaching the Consumer Grievance Redressal Forum, there is no reason for us to review the said order. The review application fails and is, accordingly, dismissed.

12. Let a certified copy of this order be furnished to the learned Counsel for the parties, by 19.3.2019, on payment of usual charges.

(N.S. Dhanik, J.)
13.3.2019

(Ramesh Ranganathan, C.J.)
13.3.2019

Prabodh